

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Army Contract Award]

FILE: B-198900

DATE: July 1, 1980

MATTER OF: Gateway Van & Storage Company DL604887

DIGEST:

1. Bidder, whose bid price after evaluation per invitation terms on basis of prompt payment discount offered was not low, did not submit "otherwise successful bid" which may be changed when late modification is submitted making bid more favorable to Government.
2. Protest concerning small business size status is by law matter for decision by Small Business Administration and not for consideration by GAO.
3. Where it is clear from protester's submission that protest concerns one matter which is legally without merit and another not subject to GAO review, protest is decided without obtaining agency report and without requested conference, since they would serve no useful purpose.

Gateway Van & Storage Company (Gateway) protests the award made by the St. Louis Area Support Center (Department of the Army) to another firm on item 0002 of invitation for bids (IFB) No. DAAJ04-80-B-0007. DL601043
The bases of the protest are that Gateway, not the awardee, submitted the low bid price on the item and that the awardee was not a small business as was required by the IFB. We deny in part and dismiss in part the protest.

Gateway and the awardee both submitted base bid prices and prompt payment discounts. Gateway's base bid price on item 0002 was lower than the awardee's. The IFB indicated that prompt payment discounts of 20 days would be considered in evaluating bids for award and that shorter prompt payment discounts would not be.

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Since Gateway offered a 10-day prompt payment discount, the discount was not considered in the evaluation of bids. The 20-day prompt payment discount offered by the awardee made its bid lower than Gateway's.

Gateway states that, in response to a request for bid confirmation by the contracting officer, it confirmed its base bid with a prompt payment discount of 20 days. Gateway's bid evaluated on the basis of the 20-day discount would be the low bid. Gateway contends that the change from 10 to 20 days is permitted under the IFB late bids clause which provides:

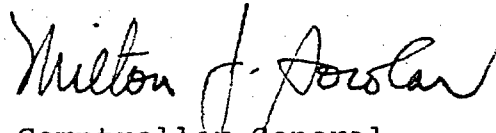
"* * * a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted."

The foregoing clause permits late modification of an "otherwise successful bid." Gateway's bid was not the "otherwise successful bid" at bid opening. The IFB provided for award being made to the low bidder on item 0002 and indicated that prompt payment discounts of 20 days would be included in the evaluation of bids to determine the low bid. While Gateway was the low bidder on the base bid for item 0002, the awardee's bid on that item was the low bid on the basis of prices and discounts offered at bid opening, which was the specified method of evaluation. Therefore, the awardee's bid was the successful bid. Consequently, Gateway's late attempt to make the discount available for bid evaluation could not be considered under the late bids clause. Mitchell Brothers General Contractors, B-192428, August 31, 1978, 78-2 CPD 163.

Gateway's contention that the awardee was not a small business as was required by the IFB is not for consideration by our Office. Under 15 U.S.C. § 637(b) (1976), the Small Business Administration (SBA) is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes and its determination is not subject to our review. Winfield Manufacturing Co., Inc., B-194806, May 29, 1979, 79-1 CPD 381; Cardan Company, B-193839,

January 31, 1979, 79-1 CPD 76; Mann's Construction Co., B-191462(2), March 29, 1978, 78-1 CPD 245. We understand that Gateway's appeal to the SBA on this matter resulted in the SBA's finding the awardee to be a small business.

It is clear from Gateway's submission that the protest concerns one matter which is legally without merit and another not subject to our review. Therefore, we have decided the protest without obtaining an agency report and without the conference requested by Gateway, since they would serve no useful purpose. Northern Illinois University, B-194055, March 15, 1979, 79-1 CPD 184.



Acting Comptroller General
 of the United States